

Message Text

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ACTION SCI-06

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FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 3042

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DEPARTMENT PASS AEC AND NAS

E.O. 11652: N/A

TAGS: TECH JA US

SUBJ: ABCC

1. FIRST NORTH AMERICA DIV DIRECTOR MATSUURA (TREATIES DIR DIRECTOR OWADA AND NUMATA ALSO PRESENT) CALLED IN EMBOFF JULY 2 TO OFFER FURTHER COMMENT AND EXPLANATION CONCERNING JAPANESE REVISED DRAFT OF ACT OF ENDOWMENT WHICH WAS PROVIDED TO US SIDE ON LAST DAY OF RECENT DISCUSSIONS IN TOKYO (I.E. JUNE 21), AND TO INDICATE WHAT FURTHER STEPS JAPANESE SIDE HAS TAKEN SINCE THAT TIME.

2. MATSUURA GROUPED PENDING ISSUES INTO FOUR CATEGORIES: (A) LEGAL; (B) INITIAL CONTRIBUTIONS FROM TWO SIDES TO NEW FOUNDATION; (C) WORDING OF ACT OF ENDOWMENT; AND (D) DETAILED OPERATIONAL MATTERS WHICH ARE NOT SET FORTH IN ACT OF ENDOWMENT. MATSUURA SAID POINT (D) SHOULD BE RESERVED FOR DISCUSSION WHEN TWO SIDES MEET AGAIN IN LATE JULY, ON THIS OCCASION HE AND HIS COLLEAGUES WISHED TO COMMENT FURTHER TO EMBOFF ON OTHER THREE POINTS.

3. LEGAL QUESTIONS: OWADA SPOKE TO THIS SUBJECT ALONG FOLLOWING LINES. HE REFERRED TO DR. LIVERMAN'S PROPOSAL ON JUNE 21 THAT PARA THREE OF LIMITED OFFICIAL USE

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EXCHANGE OF NOTES SHOULD BE PHRASED TO INDICATE

THAT CONSULTATIONS WOULD TAKE PLACE QTE WHEN
EITHER DEEMS IT APPROPRIATE UNQTE. OWADA SAID
THAT TREATIES DIVISION HAD TAKEN HARD LOOK AT THIS
PARAGRAPH AND PROPOSED FOLLOWING WORDING:
QTE 3. THE TWO GOVERNMENTS SHALL KEEP EACH OTHER
INFORMED, AND, WHENEVER NECESSARY, CONSULT WITH
EACH OTHER ON MATTERS PERTAINING TO THE ESTABLISHMENT
AND OPERATION OF THE FOUNDATION UNQTE. OWADA SAID
THAT TREATIES DIVISION CONSIDERS PHRASE QTE WHENEVER
NECESSARY UNQTE TO BE MORE POSITIVE AND FORTHCOMING
THAN DR. LIVERMAN'S FORMULATION, AND HE WAS ADVANCING
SUCH WORDING IN THAT SPIRIT. OWADA NOTED THAT
JAPANESE SIDE HAD ALREADY MADE CLEAR THAT DECISION
TO ESTABLISH FOUNDATION AS JURISTIC PERSON UNDER
CIVIL LAW IMPOSES LIMITATIONS ON WHAT CAN AND
CANNOT BE STATED IN ACT OF ENDOWMENT, AND HE DID
NOT WISH TO BELABOR POINT. RATHER, HE STRESSED
THAT DESPITE THESE LIMITATIONS, THERE IS NO DOUBT
IN MINDS OF JAPANESE OFFICIALS THAT REQUEST FROM
US SIDE FOR CONSULTATIONS COULD NEVER BE REFUSED
AND THAT CERTAINLY EITHER GOVERNMENT COULD TAKE
INITIATIVE IN PROPOSING SUCH CONSULTATIONS. HOWEVER,
WORD QTE EITHER UNQTE COULD NOT BE USED IN TEXT
OF NOTE BECAUSE IT WOULD ALMOST CERTAINLY BE
SEIZED UPON BY POLITICAL OPPONENTS OF GOJ AND
ABCC TO ARGUE THAT GOJ HAD PROVIDED LOOPHOLE
FOR USG TO TAKE UNILATERAL ACTION.

4. MATSUURA THEN TOOK UP THREAD OF CONVERSATION BY
NOTING THAT PARA THREE OF EXCHANGE OF NOTES AND
PARA FOUR OF RECORD OF DISCUSSIONS ARE DIRECTLY
RELATED. FONOFF HAS BEEN CAREFULLY CONSIDERING
VERSION OF LATTER WHICH WAS GIVEN TO US SIDE IN
HANDWRITTEN FORM (BY NUMATA) ON JUNE 21. FONOFF
LAWYERS COULD NOT AGREE TO NAMATA'S SUGGESTED
FORMULATION, BUT MATSUURA PROVIDED EMBOFF WITH
FOLLOWING TENTATIVE RPT TENTATIVE REVISED TEXT
ON WHICH OWADA SAID HE WOULD TRY TO GET AGREEMENT
WITHIN FONOFF: QTE 4. THE REPRESENTATIVES OF THE
TWO GOVERNMENTS CONFIRMED THAT INNER QTE MATTERS
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PERTAINING TO THE ESTABLISHMENT AND OPERATION OF
FOUNDATION END INNER QTE, REFERRED TO IN PARA THREE
OF THE ABOVE-MENTIONED NOTES, INCLUDE SUCH MATTERS
AS THE ANNUAL PLANS AND REPORTS OF THE ACTIVITIES
OF THE FOUNDATION, ITS BUDGET ESTIMATES AND
SETTLEMENTS, THE DISPOSITION OF PERMANENT PROPERTIES
AND CHANGES IN THE STRUCTURE OF THE FOUNDATION UNQTE.
MATSUURA STATED, AND OWADA CONFIRMED, THAT THIS

FORMULATION WAS MAXIMUM WHICH GOJ COULD OFFER UNDER LIMITATIONS IMPOSED BY CIVIL CODE AND STANDARD PRACTICE. HERE AGAIN, THEY POINTED OUT, WE ARE UP AGAINST POLITICAL NECESSITY OF PRESERVING APPEARANCE OF NEW ENTITY AS JAPANESE FOUNDATION, AND NOT JUST USG OPERATION WHICH IS BEING CAMOUFLAGED TO LOOK LIKE ONE. IT IS THIS CONSIDERATION ABOVE ALL WHICH PRECLUDES INCLUSION IN RECORD OF DISCUSSIONS OF ANY DETAILED STATEMENT ON OPERATIONS SUBJECT TO CONTROL OF TWO GOVERNMENTS. MATSUURA CONCLUDED THIS SEGMENT OF CONVERSATION BY STRESSING THAT ALL POINTS OUTLINED ABOVE WOULD OF COURSE BE OPEN TO FURTHER DISCUSSION WHEN TWO SIDES NEXT MEET.

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5. INITIAL CONTRIBUTIONS: MATSUURA STATED THAT HEALTH AND WELFARE MINISTRY HAS HAD FURTHER DISCUSSIONS WITH FINANCE MINISTRY ON QUESTION OF JAPANESE SIDE DONATING LAND, BUT RESPONSE CONTIINUES TO BE NEGATIVE. HOWEVER, POSSIBILITY REMAINS THAT JAPANESE SIDE COULD UNDERTAKE TO PAY ANNUAL RENT FOR DESIGNATED PERIOD (THUS REMOVING THIS COST FROM OPERATING BUDGET) AND INTERNAL GOJ DISCUSSIONS TO THAT END ARE CONTINUING.

6. WORDING OF ACT OF ENDOWMENT: NUMATA THEN NOTED THAT JAPANESE REVISED DRAFT OF JUNE 21 CONTAINED SEVERAL CHANGES IN WORDING TO REFLECT DISCUSSIONS BETWEEN TWO SIDES IN PRECEDING WEEK. THERE WAS

SOME RENUMBERING OF PARAGRAPHS. WITH RESPECT TO ARTICLE 12, WE SHOULD UNDERSTAND THAT QTE PERMANENT DIRECTORS UNQTE MEANT PEOPLE BEING EMPLOYED FULL TIME, WHEREAS QTE DIRECTOR UNQTE MEANT PEOPLE WORKING ONLY PART TIME, WHICH AS MINIMUM MIGHT SIMPLY BE TIME REQUIRED TO ATTEND BOARD MEETINGS.

7. ANOTHER CHANGE IN DRAFT REFLECTED PROBLEM OF INCORPORATING OPERATING BODY (I.E. SECRETARIAT AND LABORATORIES) INTO BOARD. SINCE LABORATORIES ARE MENTIONED IN ARTICLE 4 (1), IT WAS NECESSARY TO INTRODUCE CONCEPT OF SECRETARIAT BY ADDING NEW CHAPTER (CHAPTER VI, ARTICLE 24), AND THEN TO LIMITED OFFICIAL USE

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INDICATE WHO WOULD BE IN CHARGE OF TWO OPERATING ARMS, HENCE ARTICLE 25 (CONCERNING HEAD OF LABORATORIES) AND ARTICLE 26 (CONCERNING HEAD OF SECRETARIAT).

8. REVISED DRAFT ALSO INCLUDES CHANGES TO REFLECT TERMS OF OFFICE OF MEMBERS OF BOARD.

9. MATSUURA CONCLUDED CONVERSATION BY ASKING THAT ABOVE POINTS BE TRANSMITTED TO WASHINGTON WITH REQUEST THAT THEY BE STUDIED AND, IF AT ALL POSSIBLE, PRELIMINARY REACTIONS CONVEYED TO GOJ IN TOKYO BY JULY 10 WHEN OWADA (WHO HAS RESPONSIBILITY FOR LEGAL ASPECTS OF DOCUMENTS) MUST DEPART FOR LAW OF SEA CONFERENCE IN CARACAS. EMBOFF RESPONDED THAT HE COULD NOT BE SURE HOW AEC REPS WOULD RESPOND TO THESE FURTHER COMMENTS AND EXPLANATIONS, BUT THAT HE WOULD OF COURSE TRANSMIT THEM TO WASHINGTON IMMEDIATELY.

10. EMBOFF SUBSEQUENTLY CALLED (PRIMARILY TO DISCUSS OTHER MATTERS) ON NORTH AMERICAN AFFAIRS DIRGEN YAMAZAKI, WHO RAISED ABCC AND INQUIRED HOW MATTERS WERE PROGRESSING. DURING ENSUING BRIEF CONVERSATION, HE SINGLED OUT QUESTION OF AUDITORS. YAMAZAKI (WHO HAD UNTIL TWO MONTHS AGO BEEN MINISTER AT JAPANESE EMBASSY WASHINGTON, AND IS THEREFORE VERSED IN USG OPERATIONS) NOTED THAT US SIDE MIGHT BE THINKING IN TERMS OF GAO AUDITORS HAVING DIRECT ACCESS TO RECORDS OF NEW FOUNDATION, AND CONDUCTING AUDIT ON THE SPOT IN HIROSHIMA AND NAGASAKI. HE POINTED OUT THAT THIS WOULD BE POLITICALLY IMPOSSIBLE FOR GOJ, AND SUGGESTED THAT ACCEPTABLE ALTERNATIVE WOULD BE FOR AEC TO SUBCONTRACT TO NAS (AS AT PRESENT) WITH NAS IN TURN HAVING CONTRACT WITH NEW FOUNDATION,

SO THAT GAO COULD IF NECESSARY AUDIT NAS ACCOUNTS
BUT NOT THOSE OF FOUNDATION ITSELF. EMBOFF REPLIED
THAT ENTIRE QUESTION OF AUDIT WAS OF MAJOR CONCERN
TO US SIDE, BECAUSE OF LEGAL REQUIREMENTS AMONG
OTHERS, THAT US SIDE WAS MINDFUL OF PROBLEMS TWO
SIDES MAY FACE ON THIS ISSUE, WHICH REMAIN TO BE
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RESOLVED.

11. COMMENT: REMARKS OF MATSUURA ET AL WERE
MEANT TO HIGHLIGHT FOR US SOME OF SPECIFIC
AGREEMENTS ACHIEVED DURING RECENT DISCUSSIONS
AS REFLECTED IN REVISED DRAFT. JAPANESE SIDE IS
STILL PLANNING ON RESUMING DISCUSSIONS IN TOKYO
IN LATE JULY, AND ALSO LOOKS FORWARD TO HAVING
ANY POSSIBLE ADVANCE COMMENT FROM AEC AND/OR
KRATZER ON HIS RETURN TO TOKYO.
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